ARBAIN BASRI

v.

KETUA POLIS NEGARA & ANOR

HIGH COURT MALAYA, JOHOR BAHRU
SYED AHMAD HELMY J
[CIVIL SUIT NO: (MT-1) 22-1-2001]
17 JULY 2007

ADMINISTRATIVE LAW: *Rights and liabilities of public servants - Dismissal of police inspector - Allegation of misconduct - Whether plaintiff exposed to 'double jeopardy' or being punished twice for same charges - Federal Constitution, art. 5(1)*

ADMINISTRATIVE LAW: *Public servants - Dismissal of police inspector - Right to be heard - Failure of permitting plaintiff to address matters raised in confidential report that was considered in arriving at decision of dismissal - Whether a blatant breach of the rules of natural justice - Whether a breach of fundamental right - Whether contravened art. 135(2) of the Federal Constitution - Public Officers (Conduct and Discipline) Regulations 1993, reg. 28(4)*

ADMINISTRATIVE LAW: *Rights and liabilities of public servants - Dismissal of public inspector - Rules of natural justice - Establishing an investigative committee - Necessity of - Public Officers (Conduct and Discipline) Regulations 1993, reg. 28(4) - Failure to establish - Whether an infringement of procedural fairness*

ADMINISTRATIVE LAW: *Exercise of judicial functions - Dismissal of police inspector - Power of court to interfere with punishment by disciplinary authority - Failure to provide plaintiff with the right to be heard - Whether an appropriate case for court to intervene and exercise its discretionary power - Wednesbury principle - Whether there were extraneous circumstances warranting intervention of court*

The plaintiff, who was holding the rank of Inspector in the Royal Malaysian Police, was dismissed by the first defendant after he was found guilty of unsatisfactory work and misconduct. The plaintiff filed the present proceedings and challenged his dismissal. The essence of the charges were that the plaintiff had failed to perform his duties as investigating officer for certain periods of time which was contrary to reg. 4(2) of the Public Officers (Conduct and Discipline) Regulations 1993. The facts were that the plaintiff

had been earlier charged for similar charges in the magistrate courts but had been acquitted and discharged in the first magistrate court action while the charge in the second magistrate court action had been withdrawn. Prior to the withdrawal of the second charge of the magistrate court's action, disciplinary proceedings on the first and second charges of the magistrate court's action continued whereupon on 15 June 1995 he was found guilty and was imposed a penalty of one day's salary. On 23 May 1997, the plaintiff was issued with show cause notice in respect of five charges, two of which was similar to the charges in the first and second magistrate court action. On 30 June 1997, the plaintiff replied to the show cause letter and on 18 February 1998 the first defendant found him guilty on all five charges and the plaintiff was dismissed from the force. The plaintiff thus submitted that (i) the first and second charges were similar to the charges in the aforesaid first and second magistrate court action, thus the dismissal was wrongful in law by reason of the magistrate court's acquittal of the plaintiff of the first charge and the withdrawal of the second charge in the magistrate's court action and hence there was no basis for the first respondent to continue with the disciplinary proceedings which had consequently exposed the plaintiff to double jeopardy; (ii) that the evidence adduced clearly showed that aside from the similarity of the charges in the magistrate court action and the disciplinary proceedings the plaintiff had been punished twice for the same charges by the disciplinary body at the State Kontinjen level and also by the headquarters in Bukit Aman; (iii) as regards the three other charges, plaintiff submitted that it was related to failure to note down entries in the Buku Perharian Rasmi which was connected to the first two charges and since the first two charges have been held to be wrongful the three other charges should also be struck down; (iv) that the plaintiff was not given a reasonable opportunity to be heard which was constitutionally provided for by art. 135(2) of the Federal Constitution in that the first defendant had taken into consideration the confidential report in the decision to dismiss the plaintiff and the plaintiff was never handed nor given an opportunity to rebut or explain the contents of the confidential report; (v) the failure of the respondent to form an investigation committee to investigate the allegation and explanation of the plaintiff in his reply to the show cause letter contravened reg. 28(4) of the Public Officers (Conduct and Discipline) Regulations 1993.

Held (allowing plaintiff's claim):

(1) Aside from the two mentioned magistrate court actions, the plaintiff had been punished twice for the same charges by the disciplinary body at the State Kontinjen and the disciplinary body at Bukit Aman. The State Kontinjen had found him guilty of the charges and fined him a day's salary. The attempt by the federal counsel's submission that the punishment meted out by the State Kontinjen was in relation to a different show cause letter could not be accepted as the maker of the document was never called, the net effect of which there was no rebuttal evidence and the plaintiff had suffered double jeopardy having been punished twice for the same offence, a serious transgression of art. 5(1) of the Federal Constitution. It was also pertinent to note that while the disciplinary proceedings and the magistrate's court action was going on, a Laporan Prestasi Tugas was issued by the Pegawai Pemerintah supporting the performance and conduct of the plaintiff. The plaintiff was issued with two letters of his exemplary performance, dedication and responsibility as Platoon Head which was a telling piece of evidence of his performance and responsible conduct. (paras 16 & 17)

(2) The confidential report was taken into consideration by the first defendant in arriving at the decision of dismissal of the plaintiff. Evidence showed that the confidential report was furnished to the Ketua Polis Negara before the show cause letter and that it was not served on the plaintiff nor was the plaintiff informed that he could request a copy of the said report. The failure of permitting the plaintiff to address the matters raised in the confidential report was a blatant breach of the rules of natural justice. Where a disciplinary action had taken into account matters which was never made known to the person affected by such matters so as to give him an opportunity to comment on it, or to controvert it, such failure was not to be regarded as a pure technicality – it constituted the breach of a fundamental right, namely the right to be heard. (paras 21, 22 & 27)

(3) The wording in reg. 28(4) of the Public Officers (Conduct and Discipline) Regulations 1993 provides for the establishment of an investigative committee to investigate matters raised by the disciplined party and in the context of the factual matrix

herein the necessity of establishing such a committee arose so as to arrive at a neutral report to assist the disciplinary authority in its serious decision of dismissal. The failure as such was an infringement of procedural fairness. Further, the absence of evidence as to the actual date of dismissal by the first defendant raised a doubt as to whether the disciplinary body did convene to mete out the decision of dismissal. There must be evidence as to the actual date of decision to dismiss by the disciplinary body for the order of dismissal to be valid. (paras 28 & 29)

(4) The disciplinary authority had in meting out the sentence of dismissal taken into consideration the confidential report without giving the plaintiff an opportunity to rebut, contradict or explain same and failed to serve same on the plaintiff. It was an appropriate case for this court to intervene and exercise its discretionary power of striking down the sentence of dismissal on the ground of the Wednesbury principle. The confidential report which the plaintiff was not given an opportunity to rebut, contradict or explain was an extraneous circumstance which warranted the court to intervene. (para 35)

[Order accordingly.]

Case(s) referred to:

Azman Abdullah v. Ketua Polis Negara [1997] 1 CLJ 257 CA ***(refd)***

B Surinder Singh Kanda v. The Government of the Federation of Malaya [1962] 1 LNS 14 ***(refd)***

Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 CLJ 333 SC ***(refd)***

Harry Lee Wee v. Law Society of Singapore [1984] 1 LNS 77 ***(refd)***

Inspector General of Police & Anor v. Alan Noor Kamat [1987] 1 LNS 101 ***(refd)***

Kareem Mohamed lwn. Ketua Polis Negeri Perlis & Satu Lagi [2003] 5 CLJ 235 HC ***(refd)***

M Sentivelu R Marimuthu v. Public Services Commission Malaysia & Anor [2005] 3 CLJ 778 CA ***(refd)***

Ng Hock Cheng v. Pengarah Am Penjara & Ors [1998] 1 CLJ 405 FC ***(refd)***

R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Ridge v. Baldwin [1964] AC 40 ***(refd)***

Shamsiah Ahmad Sham v. Public Services Commission, Malaysia & Anor [1991] 1 CLJ 23; [1991] 1 CLJ (Rep) 419 SC ***(refd)***

Yap Jack Keet v. Ketua Polis Negara & Anor [2000] 7 CLJ 74 HC ***(refd)***

Zakaria Abdul Rahman v. Ketua Polis Negara Malaysia & Anor [2001] 6 CLJ 273 HC ***(refd)***

Legislation referred to:
Federal Constitution, arts. 5(1), 135(2)
Public Officers (Conduct and Discipline) Regulations 1993, reg. 28(4)

For the plaintiff - Maniam Nair; M/s Maniam Nair & Co
For the defendants - Suzana Atan SFC

Reported by Suhainah Wahiduddin

JUDGMENT

Syed Ahmad Helmy J:

[1] Plaintiff who was holding the rank of Inspector in the Royal Malaysian Police was on 18 February 1998 dismissed by the 1st defendant after he was found guilty of five charges of unsatisfactory work or misconduct. The plaintiff filed the present proceeding and challenged his dismissal on five grounds.

[2] The first ground of challenge was there was double jeopardy and *mala fide* in respect of the 1st and 2nd charges and no basis whatsoever in relation to the 3rd to 5th charges.

[3] The five charges are as follows:

ALASAN PERTAMA

Bahawa anda sebagai pegawai awam iaitu Inspektor dalam Pasukan Polis Diraja Malaysia dan ketika itu bertugas sebagai Pegawai Penyiasat 'A' Team Ibu pejabat Polis Daerah Johor Bahru, telah didapati tidak bertanggungjawab iaitu anda telah tidak menjalankan tugas-tugas hakiki sebagai Pegawai Penyiasat 'A' Team Ibu pejabat Polis Daerah Johor Bahru pada tarikh-tarikh yang dinyatakan di Lampiran 'A', maka dengan hal yang demikian anda telah melanggar tatakelakuan di bawah Peraturan 4(2)(g) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 yang berbunyi seperti berikut:

4(2) Seseorang pegawai tidak boleh:

(g) tidak bertanggungjawab

ALASAN KEDUA

Bahawa anda sebagai pegawai awam iaitu Inspektor dalam Pasukan Polis Diraja Malaysia dan ketika itu Ibupejabat Polis Daerah Johor Bahru, telah didapati tidak bertanggungjawab iaitu anda telah tidak

menjalankan tugas-tugas hakiki sebagai Pegawai Penyiasat 'A' Team Ibu pejabat Polis Daerah Johor Bahru pada tarikh-tarikh yang dinyatakan di Lampiran 'B', maka dengan hal yang demikian anda telah melanggar tatakelakuan di bawah Peraturan 4(2)(g) Peraturan-Peraturan Pegawai Am (Kelakuan dan Tatatertib) 1993, yang berbunyi seperti berikut:

4(2) Seseorang pegawai tidak boleh:

(g) tidak bertanggungjawab.

ALASAN KETIGA

Bahawa anda sebagai pegawai awam iaitu Inspektor dalam Pasukan Polis Diraja Malaysia dan ketika itu bertugas sebagai Pegawai Penyiasat 'A' Team Ibu pejabat Polis Daerah Johor Bahru, telah didapati ingkar perintah iaitu anda telah tidak membuat catatan pergerakan dan penugasan dalam Buku Perharian Rasmi (Pol.4) tahun 1991 bagi tempoh 16.11.1991 hingga 31.12.1991, iaitu seperti yang dikehendaki oleh perenggan 9, Perintah Tetap Ketua Polis Negara A 121, maka dengan hal yang demikian anda telah melanggar tatakelakuan di bawah Peraturan 4(2)(i) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993, yang berbunyi seperti berikut:

4(2) Seseorang pegawai tidak boleh:

(i) ingkar perintah atau berkelakuan dengan apa-apa cara yang boleh ditafsirkan dengan munasabah sebagai ingkar perintah.

ALASAN KEEMPAT

Bahawa anda sebagai pegawai awam iaitu Inspektor dalam Pasukan Polis Diraja Malaysia dan ketika itu bertugas sebagai Pegawai Penyiasat 'A' Team Ibu pejabat Polis Daerah Johor Bahru, telah didapati ingkar perintah iaitu anda telah tidak mengemukakan Buku Perharian Rasmi (Pol.4) kepada Pegawai Penyelia sebelum 5 haribulan pada tiap-tiap bulan mulai Januari 1991 hingga Disember 1991, iaitu seperti yang dikehendaki oleh perenggan 8, Perintah Tetap Ketua Polis Negara A 121, maka dengan hal yang demikian anda telah melanggar tatakelakuan di bawah Peraturan 4(2)(i) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993, yang berbunyi seperti berikut:

4(2) Seseorang pegawai tidak boleh:

(i) ingkar perintah atau berkelakuan dengan apa-apa cara yang boleh ditafsirkan dengan munasabah sebagai ingkar perintah.

ALASAN KELIMA

Bahawa anda, sebagai pegawai awam iaitu Inspektor dalam Pasukan Polis Diraja Malaysia dan ketika itu bertugas sebagai Pegawai Penyiasat 'A' Team Ibu pejabat Polis Daerah Johor Bahru, telah didapati ingkar perintah iaitu anda telah tidak memelihara dan mengekalkan Buku Perharian Rasmi (Pol. 4) bagi tahun 1992, 1993 dan 1994 iaitu seperti yang dikehendaki oleh perenggan 8, Perintah Tetap Ketua Polis Negara A 121, maka dengan hal yang demikian anda telah melanggar tatakelakuan di bawah Peraturan 4(2)(i) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993, yang berbunyi seperti berikut:

4(2) Seseorang pegawai tidak boleh:

(h) ingkar perintah atau berkelakuan dengan apa-apa cara yang boleh ditafsirkan sebagai munasabah sebagai ingkar perintah.

[4] The essence of the 1st charge was that the plaintiff failed to perform his duties as Investigating Officer of Team A for the period 27 October 1991 to 18 November 1991.

[5] Prior to the disciplinary action on the 1st charge aforesaid the plaintiff was charged in the Magistrates Court Johor Bahru in Kes No. 83-398-92 (hereinafter called the First Magistrate Court action) for failing to attend to his duties as Investigating Officer of Team A for the same period 27 October 1991 to 18 November 1991.

[6] The plaintiff was acquitted and discharged without defence being called of the First Magistrate Court Action on 7 April 1994 and plaintiff was called to resume duty in Team C of Commercial Crime Department. The prosecution filed an appeal but was subsequently withdrawn on 20 June 1994 and the plaintiff was transferred to the Batalion 6 Pasukan Gerakan Am Bakri Muar, Johor as Platoon Commander.

[7] Whilst serving as the Platoon Commander the plaintiff was on 16 March 1995 charged in the Johor Bahru Magistrate Court (B) in Kes No. B82-2-95 (hereinafter referred to as the Second Magistrate Court action) for failing to attend to his duties for a period of 21 days from 12 March 1992 to 2 November 1993.

[8] This second charge in the Second Magistrates Court was withdrawn by the prosecution on 31 July 1996 and plaintiff resumed his duties with Batalion 6, Pasukan Gerakan Am Bakri, Muar.

[9] Prior to the withdrawal of the second charge of the Magistrate Court's action disciplinary proceedings on the first and second charges continued whereupon on 15 June 1995 he was found guilty and was imposed a penalty of one day's salary.

[10] On 23 May 1997 ie, some 11 months after the withdrawal of the second Magistrate Court action and after the commencement of the disciplinary proceedings on 15 June 1995 in respect of the two charges, the plaintiff was issued with show cause notice in respect of five charges, two of which was similar to the charges in the first and second Magistrate Court Action.

[11] On 30 June 1997 the plaintiff replied to the show cause letter of 23 May 1997 and on 18 February 1998 the 1st defendant found him guilty on all five charges and the plaintiff was dismissed from the force.

[12] In the light of the aforesaid learned counsel for the plaintiff submits that the dismissal is wrongful in law by reason of the fact that the first charge which is similar to the charge in the First Magistrate Court Action the Magistrate Court had after a full trial found him not guilty and the prosecution's appeal was withdrawn and the second charge which is similar to the charge in the Second Magistrate's Court action had been withdrawn. Hence by reason of the Magistrate Court's acquittal of the plaintiff of the first charge and the withdrawal of the second charge in the Second Magistrate's Court action there is no basis for the 1st respondent to continue with the disciplinary proceedings which has consequently exposed the plaintiff to double jeopardy.

[13] Further it is contended by learned counsel for plaintiff that the evidence adduced clearly shows that aside from the similarity of the charges in the Magistrate Court action and the disciplinary proceedings the plaintiff had been punished twice for the same charges by the disciplinary body at the State Kontinjen level and also by the headquarters in Bukit Aman and refers to the document appearing on p. 10 of bundle H.

[14] As regards the three other charges learned counsel submits that it relates to entries in the Perharian Rasmi which is connected to the first two charges and since the first two charges have been held to be wrongful the three charges should also be struck down.

[15] In support of its submission aforesaid learned counsel for the plaintiff relied on the case of *Harry Lee Wee v. Law Society of Singapore* [1984] 1 LNS 77 for the proposition that the doctrine of *autrefois* convict and acquit is applicable to disciplinary proceedings which was applied in the case of *Zakaria Abdul Rahman v. Ketua Polis Negara Malaysia & Anor* [2001] 6 CLJ 273.

[16] On the issue of double jeopardy upon evaluating the evidence it is my finding that aside from the two Magistrate Court actions the plaintiff has been punished twice for the same charges by the disciplinary body at the State Kontinjen and the disciplinary body at Bukit Aman. This is reflected by the document appearing on p. 10 of Ikatan H which expressly states that on 15 June 1995 the State Kontinjen had found him guilty of the charge relating to JB Report 23417/93 and fined him a day's salary. The attempt by learned Federal Counsel to persuade me that the punishment meted out by the State Kontinjen is in relation to a different show cause letter dated 2 March 1994 for a charge of 'Kesalahan Pengendalian Barang' in connection with Kulai Report No. 1957/89 as appears in the several documents appearing in Ikatan I and that there was a typographical error in p. 10 of Ikatan H as advanced through the testimony of DWS4 (Tan Sri Abdul Rahim bin Mohd. Noor) cannot be accepted as the maker was never called, the net effect of which there is no rebuttal evidence and the plaintiff has suffered double jeopardy having been punished twice for the same offence and serious transgression of art. 5(1) of the Federal Constitution.

[17] It is also pertinent to note while the disciplinary proceedings and the Magistrate's Court action was on going a Laporan Prestasi Tugas was issued by the Pegawai Pemerintah Bt. 6 Pasukan Polis Hutan to the DPP on 13 December 1995 supporting the performance and conduct of the plaintiff. The plaintiff was also issued with two letters on 25 March 1997 and 12 May 1997 of his exemplary performance, dedication and responsibility as Platoon Head which to my mind is a telling piece of evidence of his performance and responsible conduct.

[18] Second and fourth issue – breach of art. 135(2) of the Federal Constitution and reg. 28(4) Public Officers (Conduct and Discipline) Regulations 1993.

[19] The plaintiff's challenge on the second and fourth issues which is taken together is that the plaintiff was not given a reasonable opportunity to be heard which is constitutionally provided for by art. 135(2) of the Federal Constitution in that the 1st defendant had taken into consideration the Confidential Report in the decision to dismiss the plaintiff and the plaintiff was never handed nor given an opportunity to rebut or explain the contents of the Confidential Report. Furthermore the failure by the respondent to form an Investigation Committee to investigate the allegation and explanation of the plaintiff in his reply to the show cause letter of his strained relationship with DW2 DSP Megat Aminuddin bin Megat Wali and his explanation and clarification of the five charges contravened reg. 28(4) of the Public Officers (Conduct and Discipline) Regulations 1993.

[20] The defendants in refuting the plaintiff's challenge submitted that the plaintiff was given a reasonable opportunity to be heard and there is no contravention of both art. 135(2) of the Federal Constitution and reg. 28(4) of the Public Officers (Conduct and Discipline) Regulations 1993 and relies on the case of *Ghazi Mohd. Sawi v. Mohd. Haniff Omar, Ketua Polis Negara Malaysia & Anor* [1994] 2 CLJ 333.

[21] Turning to the evidence herein it is my finding that the confidential report was taken into consideration by the 1st defendant ie, SD4 in arriving at the decision of dismissal of the plaintiff. This is borne out by the evidence of both SD3 and SD4. SD3 testified that the confidential report was furnished to SD4 as the Ketua Polis Negara before the show cause letter and that it was not served on the plaintiff nor was the plaintiff informed that he could request a copy of the said report. The evidence of SD3 was acknowledged by SD4 in cross-examination that aside from the confidential report he was also handed the plaintiff's service record and the file pertaining to the disciplinary investigation and the confidential report which was not handed to the plaintiff was taken into consideration by him in arriving at his decision to dismiss the plaintiff.

[22] That being the case the failure of permitting the plaintiff to address the matters raised in the confidential report is a blatant breach of the rules of natural justice as propounded in the celebrated case of *Ridge v. Baldwin* [1964] AC 40 where Lord Morris stated:

> It is well established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet ...

[23] Hence if the party has no knowledge of the allegations which he has to meet the right to a hearing becomes illusory.

[24] The sage words of Lord Denning in *B Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] 1 LNS 14 merits reproduction.

> ... If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn LC in *Board of Education v. Rice* [1911] AC 179 down to the decision of their Lordship's Board in *Ceylon University v. Fernando* [1960] 1 WLR 223. It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might to do so. The court will not go into the likelihood of prejudice. The risk of it is enough ...

[25] The Privy Council decision in *B Surinder Singh Kanda*'s case *(supra)* was approved and applied in the Supreme Court case of *Shamsiah Ahmad Sham v. Public Services Commission, Malaysia & Anor* [1991] 1 CLJ 23; [1991] 1 CLJ (Rep) 419 where Jemuri Serjan SCJ stated:

> ... It was manifestly demonstrated to us that the first respondent had infringed the rule of natural justice in not affording the appellant the opportunity to explain or controvert her record of service which played a part in influencing its decision to impose the severest punishment permissible under the 1969 Regulations. On this ground based on the authorities cited in the judgment, the court had no alternative but to allow the appeal ...

[26] In *Shamsiah*'s case *(supra)* the disciplinary authority in arriving at its decision took into account the appellant's record of past conduct without giving her an opportunity to explain or controvert its contents. The Supreme Court found that in not having afforded her the opportunity, the respondent had infringed the rules of natural justice.

[27] The authorities establishes that where a disciplinary authority has taken into account matters which was never made known to the person affected by such matters so as to give him an opportunity to comment on it, or to controvert it, such failure was not to be regarded as a pure technicality – it constituted the breach of a fundamental right namely the right to be heard – see *Yap Jack Keet v. Ketua Polis Negara & Anor* [2000] 7 CLJ 74.

[28] As regards reg. 28(4) of the Public Officers (Conduct and Discipline) Regulations 1993 the wording thereof provides for the establishment of an Investigative Committee to investigate matters raised by the disciplined party and in the context of the factual matrix herein the necessity of establishing such a committee arises so as to arrive at a neutral report to assist the disciplinary authority in its serious decision of dismissal. The failure as such is an infringement of procedural fairness.

[29] Furthermore I am persuaded by the plaintiff's counsel submission in the absence of evidence as to the actual date of dismissal by the first defendant, as acknowledged by SD4 a doubt arises as to whether the disciplinary body did convene to mete out the decision of dismissal. To my mind there must be evidence as to the actual date of decision to dismiss by the disciplinary body for the order of dismissal to be valid.

Third Issue Of Condonation

[30] It is the plaintiff's submission that the five charges against him in the disciplinary proceedings was for the period 1991 to 1994 but disciplinary proceedings was only initiated on 23 May 1997 and decision for dismissal made on 18 February 1998 and hence the doctrine of condonation applies and relies on *Azman Abdullah v. Ketua Polis Negara* [1997] 1 CLJ 257 CA; *Inspector General of Police & Anor v. Alan Noor bin Kamat* [1987] 1 LNS 101 and *M. Sentivelu R Marimuthu v. Public Services Commission Malaysia & Anor* [2005] 3 CLJ 778.

[31] From the evidence adduced I am of the view that the doctrine of condonation in the factual matrix herein has no application. This is because the sequence of events clearly establishes that the second Magistrate's Court action in relation to the second charge was initiated on 16 March 1995 and the disciplinary proceedings at the State Kontinjen level on the first and second charge was initiated three months later on 15 June 1995. In any event there is no time limit stipulated in the Public Officers (Conduct and Discipline) Regulations 1993 for commencement of disciplinary proceedings.

Fifth Issue – Sencence Meted Out Unreasonable – Wednesbury Principle

[32] It is the plaintiff's counsel submission that in the light of the plaintiff's service of 29 years in the Police Force the dismissal is unreasonable based on the Wednesbury principle.

[33] The Wednesbury principle was appropriately summarized by Edgar Joseph Jr. FCJ in *R. Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 at p. 172.

> ... In this context, it is useful to note how Lord Diplock (at pp. 410-411) defined the three grounds of review, to wit, (i) illegality (ii) irrationality and (iii) procedural impropriety. This is how he put it:
>
> > ... By "irrationality" I mean what can by now succinctly referred to as "Wednesbury unreasonableness" ... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system ... "Irrationality" by now can stand on its own feet as an accepted ground on which a decision may be attacked by Judicial Review ...

[34] Though I concede that the disciplinary authority is the most appropriate body to mete out the prescribed punishment as laid down by the Federal Court in *Ng Hock Cheng v. Pengarah Am Penjara & Ors* [1998] 1 CLJ 405 nevertheless in certain exceptional circumstances the court can intervene in the punishment as meted out.

[35] In the factual matrix herein in the light of my finding that the disciplinary authority had in meting out the sentence of dismissal taken into consideration the confidential report without giving the plaintiff an opportunity to rebut, contradict or explain same and the failure to serve same on the plaintiff, it is an appropriate case for this court to intervene and exercise its discretionary power of striking down the sentence of dismissal on the ground of the Wednesbury principle. The confidential report which the plaintiff was not given an opportunity to rebut, contradict or explain is an extraneous circumstance which warrants the court to intervene – *Kareem Mohamed lwn. Ketua Polis Negeri Perlis & Satu Lagi* [2003] 5 CLJ 235.

[36] By reason aforesaid I allowed the plaintiff's claim herein and there shall be an order in terms of prayers 31 (a), (b), (c), (e) and (f) of the statement of claim – the prayers in prayer 31(b) to be assessed before the deputy registrar. The interest as prayed in prayer 31(f) is 8% from the date of judgment until settlement.